IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5485 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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DHARMENDRASINH RAGHUBHA GOHIL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5485 of 2002

MS SUBHADRA G PATEL for Petitioner No. 1

RULE SERVED BY DS for Respondent No. 1-2

MR AY KOGJE, AGP for Respondent No. 3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 01/08/2002

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner- detenu has

challenged the legality and validity of the order of detention dated 01.04.2002 passed against him by the District Magistrate, Bhavnagar, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act). The petitioner has been branded as "dangerous person" within the meaning of Section 2(c) of the PASA Act.

3. The bunch of papers supplied to the detenu with the grounds of detention served on the date of execution of the order of detention, reveals that the petitioner was found involved in three criminal cases punishable under Sections 323, 324, 504, 427 of Indian Penal Code and under Sec. 135(1) of the Bombay Police Act, registered with Bhavnagar "A" Division Police Station. The first offence was registered on 30.5.2002, second offence was registered on 21.3.2002 and the third on 25.1.2002. The detaining authority has considered the papers of criminal cases registered against the petitioner along with other accused and so also three statements of un-named witnesses recorded on 20.3.2002. These three witnesses were called by the detaining authority on 28.3.2002 and verification of statements has been personally recorded by the concerned authority and on 01.04.2002, the order of detention under challenge has been passed.

4. Ms. Subhadra Patel, Ld. counsel appearing for petitioner has taken me through the entire memo of petition and the order of detention is challenged on number of grounds. However, ld. counsel for the petitioner has concentrated her arguments mainly on three grounds. The first point argued by ld. counsel Ms. Patel is that the order under challenge has been passed mechanically as the sponsoring authority has placed reliance mainly on the fact of criminal cases registered against the petitioner. It is further argued that there is no proximity in all the three incidents and it would not be proper to infer that the petitioner is indulging in the activities prejudicial to the "public order". The second point argued by ld. counsel for the petitioner is that the petitioner could not have been branded as "dangerous person". On the statements of three witnesses, they have been mechanically recorded and there is nothing in the statement of three un-named witnesses that the activities of the petitioner can be said to be a challenge to the maintenance of the "public order". She has also submitted that there is a delay in considering the representation and on that ground also, continued detention requires to be quashed and set aside.

5. While enlarging the point that the detenu could not have been branded as "dangerous person", Ld. counsel appearing for the petitioner Ms. Patel has submitted that for the sake of arguments if it is accepted that the petitioner was involved in three offences as aforesaid, even than the activities of the petitioner cannot be said to be adverse to the "public order" and he ought not to have been branded as "dangerous person" within the meaning of Sec. 2(c) of the PASA Act. She has further submitted that the registration of such criminal offences may affect adversely to the maintenance of "law and order", but not the "public order".

6. I have considered the submissions of ld. AGP Mr. A.Y. Kogje for the State. However, in view of the ratio of the decision of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki v/s Police Commissioner, Surat & Ors., reported in 2000(1) GLR P.816, the say of the ld. counsel for the petitioner shall have to be accepted. In the cited case, the detenu Ashok Jivraj was found involved in four different criminal cases and all these cases were offences against the body of a person. There were statements of independent witnesses against the detenu. By referring the decision of Mustakmiya Jabbarmiya Shaikh v/s M.M. Mehta, Commissioner of Police & Ors., reported in 1995(2) GLR 1268 (SC) and the ratio of the decision of Arun Ghosh v/s State of West Bengal, reported in 1970(1) SCC P.98, it has been observed that the stray incidents would not affect the public order and the order of detention cannot be passed in such cases. In the cited decision, this Court has also observed that "looking to the incident, the case falls under the maintenance of law and order and not the public order". On facts, when court reaches to a conclusion that the case falls under the maintenance of law and order and not the public order, the subjective satisfaction arrived at by the detaining authority does not remain valid. Unless it is found that the case falls in the category of the activities adversely affecting the public order, the detaining authority has no jurisdiction to pass the order of detention. The order of detention under challenge, therefore, cannot sustain. Other grounds assailing the validity and legality of the order is not required to be discussed as the order of detention cannot be sustained on the sole ground canvassed by ld. counsel for the petitioner.

7. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 01.04.2002 passed by District Magistrate, Bhavnagar is hereby quashed and set aside and detenu is hereby ordered to be

set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

01-08-2002 [C. K.BUCH, J]
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